No. 87-980

In the Supreme Court of the United States

OCTOBER TERM, 1987

IN THE MATTER OF B.B. AND G.B., MINORS.
MISSISSIPPI BAND OF CHOCTAW INDIANS,
Appellant,

vs.

ORREY CURTISS HOLYFIELD, VIVIAN JOAN HOLYFIELD, J.B., NATURAL MOTHER AND W.J., NATURAL FATHER,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSISSIPPI

MOTION TO DISMISS APPEAL AND TO DENY PETITION FOR WRIT OF CERTIORARI

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April, 1988

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Appellees move this Honorable Court under Supreme Court Rule 16 to dismiss the appeal or, in the alternative, to deny the Petition for Writ of Certiorari because the Appellant, Mississippi Band of Choctaw Indians, lacks standing as required under Article III, Section 2, of the Constitution of the United States of America.

Respectfully moved, on this the 20th day of April, 1988.

FACTS

The Appellees believe that the facts as presented in the Opinion of the Mississippi Supreme Court as reflected in the Appendix of the Appellant's Jurisdictional Statement at pages 11a-13a adequately state the posture of the Appeal.

J.B. and W.J., the natural mother and father of the minors in question, are full blood Mississippi Choctaw Indians and are members of the Mississippi Band of Choctaw Indians. When J.B. became pregnant she made a conscience decision to give birth to her children off of the reservation and to have them adopted by parents not living on the reservation. Both J.B. and W.J. consented to and joined in the adoption proceeding and all state requirements as to jurisdiction and procedure and substance were complied with resulting in the Holyfields, also Appellees herein, becoming the adoptive parents of the twins to which J.B. gave birth. The twins have resided with the Holyfields since a few days following their birth on December 29, 1985.

ARGUMENT

I.

The Mississippi Band of Choctaw Indians Lacks Standing to Contest the Adoption of the Choctaw Infants.

This appeal is presented by an Appellant, the Mississippi Band of Choctaw Indians, which lacks standing as it is not a real party in interest to the adoption.

It is undisputed in the record that the natural mother and natural father of the Native American babies placed for adoption consented to the proceeding and possessed the capacity to so consent; further, there were no objections to the adoption from any family representatives on either side. Quite simply, what is presented to this Court is an organization, and nothing more, disagreeing and protesting whether the natural parents of two illegitimate children may put them up for adoption when the natural parents have determined that it is in the best interest and welfare of the children. It is irrelevant that the adopted children are Choctaw Indians of full blood, making them merely eligible for enrollment in the Mississippi Band of Choctaw Indians.

Article III, Section 2, of the Constitution of the United States of America, as interpreted by this Court, requires, for purposes of standing, some actual or threatened injury amenable to judicial remedy. *Valley Forge Christian College v. Americans United for Separation of Church and State,* 454 U.S. 464, 70 L.Ed.2d 700, 102 Sup.Ct. ..... (1982).

> [Article 3] tends to assure that the legal questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a

concrete factual context conducive to a realistic appreciation of the consequence of judicial action.

Id. at ....., 70 L.Ed.2d at 709, 102 Sup.Ct. at .....

In *Valley Forge* a taxpayers' organization dedicated to the separation of church and state challenged certain property transfers made to private schools. This Court held that the organization lacks standing by applying the rules set out in *Sierra Club v. Morton,* 405 U.S. 727, 740, 31 L.Ed.2d 636, ..., 92 Sup.Ct. 1361, ... (1972):

> The requirement that a party seeking review must allege facts showing that he is himself adversely affected . . . does serve as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome.

Cited in *Valley Forge Christian College v. Americans United for Separation of Church and State,* 454 U.S. 464, 70 L.Ed.2d 700, 102 Sup.Ct. ..... (1982). The only ones with a direct interest in the outcome of this action are the Appellees, including the minor children and the adoptive parents who have been together for more than two years. Reviewing the Appellant's position and argument to this Court as well as to the Mississippi Supreme Court it becomes clear that the Appellant is actually contesting the opinion or attitude of the Indian-Appellees toward life on the reservation and the life these two competent adults chose for their infant children. The Appellant's argument also seems to be that it, the Mississippi Band of Choctaw Indians, possesses some proprietary or possessory interest to the minor Choctaw Indians who were not even born on the reservation and who are not members of the Mississippi Band of Choctaw Indians.

If the Appellant possesses standing to contest the adoption of these Choctaw Indians, when the adoption was consented to by their parents, then it would follow that any state having reason to believe that the criteria for an adoption or divorce or any other domestic matter had not been met would possess standing as well to contest the rights of the parties consenting to the action. For any State, or for that matter, the Mississippi Band of Choctaw Indians, to have such authority would render the concept of "standing" meaningless.

Every case cited by the Appellant in support of its jurisdictional statement either involves individual Indians as litigants or involves a tribe acting on behalf of a member with a direct interest or, involves causes of action or facts which actually arose on a reservation. (If the Appellant's argument succeeded that because the Indian mother conceived and carried the fetus on the reservation, then it would have to follow that if an Indian conceived or designed the plans for a criminal act while on the reservation but committed the crime off of the reservation, then the tribal court would still possess jurisdiction.) The Mississippi Supreme Court in its opinion pointed out that while the Mississippi Band of Choctaw Indians' by-laws grant "full original jurisdiction in adoption matters," By-laws of the Mississippi Band of Choctaw Indians, § 11-17-5 (1975), such is not exclusive jurisdiction. It is up to an individual Choctaw Indian to decide if he or she chooses to bring a controversy to the tribal court or to a state court, so long as that state's court possesses jurisdiction as well.

It is the position of the Appellees that the Mississippi Band of Choctaw Indians lacks standing according to Article III, Section 2 of the United States Constitution and

according to this Court's opinion *Valley Forge Christian College v. Americans United for Separation of Church and State,* 454 U.S. 464, 70 L.Ed.2d 700, 102 Sup.Ct. ..... (1982). Since the Mississippi Band of Choctaw Indians cannot overcome this threshold question which precludes Federal Jurisdiction, the appeal should be dismissed.

II.

The Appellant-Petitioner Has Failed to Show Any Reason for This Court to Grant a Writ of Certiorari As There Are No Conflicts Within the Circuits, There Is Not a Matter Before the Court Which Has Not Been or Should Be Decided, and the Decision of the Mississippi Courts Is Not in Conflict With Prior Decisions of This Court.

This Court has consistently ruled regarding certain fundamental rights to which all American citizens are entitled. The fundamental right to be a parent (or not to be a parent), the right to control the health, education and welfare of one's child, the right to procreate, and even the right to travel to and fro, are resolved in favor of the Appellees without conflict and without further need for explanation. *Skinner v. Oklahoma,* 316 U.S. 535, ... L.Ed.2d ....., ... Sup.Ct. ..... (1942) (Right to marriage and procreate, fundamental); *Moore v. City of East Cleveland,* 431 U.S. 494, 52 L.Ed.2d 531, 97 Sup.Ct. 1932 (1977) (Right to define one's own family and living arrangement without intrusion from government, fundamental); *Carey v. Population Services International,* 431 U.S. 678, 52 L.Ed. 2d 675, 97 Sup.Ct. 2010 (1977) (Right to privacy, fundamental); *Shapiro v. Thompson,* 394 U.S. 618, 22 L.Ed.2d 600, 89 Sup.Ct. 1322 (1969) (Right to travel interstate, fundamental).

The Mississippi Supreme Court has ruled that the residency of a minor is dependent upon the intent of the parent. *Mississippi Band of Choctaw Indians v. Holyfield, et al.,* 511 So.2d 918 (Miss. 1987); *Citing Boyle v. Griffin,* 84 Miss. 41, 36 So. 141 (1904), *Stubbs v. Stubbs,* 211 So.2d 821 (Miss. 1968). It is the right of the state to define the perimeters from which it will grant jurisdiction before its courts. Ninth Amendment, United States Constitution. The Appellant not only lacks standing but also lacks the substantive authority from this Court to challenge the decision of the Mississippi Supreme Court.

CONCLUSION

Despite the Appellant's argument, the Indian Child Welfare Act of 1978, Title 25, U.S.C. §§ 1901, et seq. should not be interpreted to prohibit Choctaw Indians who happen to be members of the Appellant's organization, from exercising fundamental rights granted to them by the Constitution. The Indian-Appellees, and the adopted children subject of this proceeding, are not the property of the Mississippi Band of Choctaw Indians. The Appellees did nothing improper or illegal. They elected a forum within which to bring their case and fulfilled the procedural and substantive requirements of that forum.

For the aforestated reasons, your Appellees submit that the appeal from the judgment of the Supreme Court of the State of Mississippi should be dismissed.

Respectfully submitted,

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